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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,518	04/22/2004	Duane G. Krzysik	KCC 4980 (K-C 19,319)	7372

321 7590 11/29/2006

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/829,518

Applicant(s)

KRZYSIK ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/04;7/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

In response to the election of species requirement. The Examiner has withdrawn the requirement and will examine all the original claims and their species.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-7, 10-18, 21-27, 30-38, 41-47, 51-54 and 57 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tsaur (6,126,954).

Tsaur discloses a skin cleansing composition comprising 5 to 45% by weight of a surfactant such as anionic, amphoteric, nonionic and mixtures thereof; 1 to 30% by weight of a skin benefit agent having a particle size of 1 to 200 micrometers; 1 to 30% by weight of another skin benefit agent (col. 3, lines 17-39). Tsaur teaches that said anionic surfactant includes alkyl sulfates, alkyl ether sulfates and acyl isethionates (col. 4, lines 10-61) and said amphoteric surfactants include betaines and sulfobetaines (col. 5, lines 5-67). The benefit agents disclosed in Tsaur include fats and oils such as avocado and coconut, silicone oils such as polydimethylsiloxane; esters, lipids such as ceramides and cholesterol and mixtures thereof (col. 7, lines 10-61). Note, Tsaur

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teaches that said pre-dispersion compositions have a viscosity of less than 100,000 centipoise (col. 6, lines 21-50).

As this reference teaches all of the instantly required it is considered anticipatory.

Alternatively, if the above listed claims do not anticipated the claimed invention, it would have nonetheless been obvious to one of ordinary skill in the art to combine the components to specifically teach the claimed invention, absent a showing to the contrary.

6. Claims 8-9, 28-29, 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsaur (6,126,954) in view of WO 01/19949.

Tsaur is relied upon as set forth above. Specifically, Tsaur does not teach applicant's specific amphoteric and zwitterionic surfactants.

WO '949 disclose a liquid cleansing composition comprising at least one anionic, amphoteric and zwitterionic surfactant; one lamellar structurant and optionally one nonionic and/or cationic surfactant. With respect to the amphoteric and zwitterionic surfactants, WO '949 teaches that said surfactants include acylamphopropionates and 4-[N,N-di (2-hydroxyethyl)-N-octadecylammonio]-butane-1-carboxylate (pages 14-18). Furthermore, WO '949 teaches the inclusion of adjunct materials such as titanium dioxide as a coloring agent.

It would have been obvious to one of ordinary skill in the liquid cleansing art to include additional amphoteric and/or zwitterionic surfactants to the compositions of Tsaur because said surfactants are well known to enhance moisturizing properties to the skin.

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7. Claims 19-20, 39-40 and 55-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsaur (6,126,954) in view of Barry et al (3,829,563).

Tsaur is relied upon as set forth above. Specifically, Tsaur does not specifically disclose applicant's specific surfactants having an HLB value of from 4-8.

Barry et al disclose a skin cleansing composition comprising surfactants such as anionic, amphoteric and 1 to 10% by weight of an emulsifiers having an HLB value of from 1 to 6 and including sorbitan fatty acid esters and polyoxyethylene-2-oleyl ether (col. 4, lines 51-col. 5, line 15).

It would have been obvious to one of ordinary skill in the liquid cleansing art to include the emulsifier/surfactants of Barry et al to the compositions of Tsaur because said emulsifiers/surfactants are well known nonionic surfactants used in cleansing formulations and Tsaur invites the inclusion of nonionic surfactants. Therefore, one of ordinary skill in the art would have been motivated to include said emulsifiers/surfactants, absent a showing to the contrary.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Necholus Ogden
Primary Examiner
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No
11-27-2006